

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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| Midwest Generation Energy Services, LLC | : | |
| | : | |
| Application for Certificate of Service | : | Docket No. 02-0740 |
| Authority under Section 16-115 of the | : | |
| Public Utilities Act | : | |

VERIFIED RESPONSE OF MIDWEST GENERATION ENERGY SERVICES, LLC TO ADMINISTRATIVE LAW JUDGE’S RULING

Midwest Generation Energy Services, LLC (“Midwest”), through its attorneys, hereby files with the Illinois Commerce Commission (“Commission”) this Response to Administrative Law Judge’s Ruling (“ALJ Ruling”), which was served on November 21, 2002.

A. General

Midwest is seeking authorization to serve retail customers whose annual electrical consumption is greater than 15,000 kWh. Midwest acknowledges that in order to serve such customers it must comply with Subpart C of 83 Ill. Adm. Code 451. By this filing, Midwest states that it intends to do so.

B. Section 451.20: Requirements for All Applicants under Section 16-115(d) Of the Act

1. Requirements of Section 16-115(d)(5) in light of the Appellate Court Decision in *Local Union Nos. 15, 51 and 702, International Brotherhood of Electrical Workers v. Illinois Commerce Commission*, 265 Ill. Dec. 302, 772 N.E.2d 340 (5th Dist 2002) (“*IBEW*”)

Midwest understands the effect of the Appellate Court Decision in the *IBEW* case is to require an applicant for certification as an alternative retail electric supplier (“ARES”) to affirmatively demonstrate (1) an affiliation with a utility offering delivery services reasonably comparable to those offered by the Illinois utilities, and (2) that the Illinois utilities may physically and economically deliver to the affiliated utility’s service territory. Midwest believes

that the showing contained in Attachment 3 to its Application, as supplemented by this response demonstrates compliance with the requirements of Section 16-115(d) (5) as interpreted by the *IBEW* Court.

Midwest's affiliate, Southern California Edison Company ("SCE"), is an electric utility that conducts business in California. California is a state where customers may purchase electricity from an entity other than the utility.¹ As such, Midwest meets the first test under the *IBEW* decision.

As discussed below in Section B.8, Delivery of Electricity to California, it is physically possible to deliver electricity from Illinois to California. Publicly available information indicates that the delivery of power from Illinois to California could be economic. However, as stated in its Application, Midwest continues to believe that an Illinois utility choosing to engage in retail sales in California would choose to purchase power in the West as opposed to purchasing power in the Midwest. It is possible to economically purchase electricity at wholesale in or near California. See discussion in Sections B.9 and B.10 below.

2. Delivery Services

SCE provides delivery services to the end-use customer in a manner reasonably comparable to the delivery services provided by the utilities here in Illinois.² One point of distinction is the manner in which a customer is billed for such services. For an SCE customer purchasing power and energy from an alternative provider, SCE charges the customer a bundled rate, but then credits the customer an amount equivalent to the generation portion of the bundled

¹ While retail choice currently is suspended in California, customers that have already chosen an alternative supplier continue to receive electricity from that supplier.

² The term "delivery services" is defined in Section 16-102 of the Act. 220 ILCS 5/16-102.

rate. Attachment A contains SCE's Schedule DA – Direct Access, and Attachment B contains SCE's Schedule PE –Procured Energy, which demonstrates how the credit is calculated.

In all operational aspects, however, SCE's provision of delivery services, as defined under the Illinois Public Utilities Act (the "Act"), is similar to the provision of such service in Illinois. 220 ILCS 5/1-101 *et seq.* The delivery services provided by SCE satisfies the result required by the *IBEW* decision. The IBEW Court stated:

We agree with petitioners' arguments that the construction offered by WPS and the Commission would give a new entrant an opportunity *to take an unreasonable advantage over the existing utilities*, for it would allow a new entrant into the Illinois utility market without providing the Illinois utilities affected by the new entrant an opportunity to also compete in the market of the new entrant, *hence allowing the new entrant to take an unreasonable advantage of the investments made by the formerly regulated industry.*

(Emphasis added). Here, Illinois utilities or their affiliates have the opportunity to enter the market in California. Additionally, such Illinois utilities or their affiliates have the ability to utilize the investments of SCE, as SCE has tariffs on file that allow a third-party provider the use of its wires (investments) in order to deliver power to an end-use customer.

In sum, pursuant to Section 16-115(d)(5) of the Act, the *IBEW* decision requires that an affiliate of an applicant "provides delivery services to the electric utility or utilities in whose service area or areas the proposed services will be offered that are reasonably comparable to those offered by the electric utility." 220 ILCS 5/16-115(d)(5). The services are to be comparable; neither the statute nor the court focused on the size of the direct access market in the other state. Here, Midwest's affiliate, SCE, provides delivery services in a manner reasonably comparable to the manner in which such services are provided here in Illinois. Accordingly,

Midwest's affiliate provides delivery services that are reasonably comparable to those provided here in Illinois.

3. Suspension Of Direct Access

In California, direct access or customer choice was suspended pursuant to Assembly Bill 1X ("AB 1X"), which added Section 80110 to the California Water Code. The pertinent provisions of AB 1X direct the California Public Utilities Commission ("CPUC") to determine the appropriate date for suspension of the direct access program in California. The CPUC issued an interim order in Decision 01-09-060, suspending the direct access program effective September 20, 2001. In that interim order, the CPUC put parties on notice that the CPUC could modify the interim order to include suspension of all direct access contracts executed or agreements entered into on or after July 1, 2001.

In Decision 02-03-055, adopted on March 21, 2002, the CPUC confirmed September 20, 2001 as the date the direct access program in California was suspended. This decision also confirms that customers taking direct access as of the suspension date may switch to a new electric service provider. A copy of D.02-03-055 is provided in Attachment C to this response. Pages 17-27 of the decision address implementation issues associated with the suspension of direct access. The decision cites to the pertinent language from Section 80110 of the California Water Code, as well as provides background regarding the reasons for the suspension of the direct access program.

Applicant is unaware of a specific date on which the direct access suspension will be lifted. California Water Code Section 80110 links the suspension to the period of time in which the California Department of Water Resources is supplying power under the provisions of AB 1X.

4. Certification Of Entities In California

Applicant believes that entities that are not currently authorized to sell electricity at retail in California may legally be authorized. Under California law and regulation, the rules for qualification as an electric service provider (the equivalent of Illinois retail electric service provider) are contained in each regulated electric utility's tariff rules. Tariff Rule 22 contains the procedures for electric service providers in the SCE service territory. A copy of Tariff Rule 22 is provided as attachment D to this response. The provisions for electric service provider authorization are found in section D of Tariff Rule 22. These provisions have not been suspended.

An electric service provider which seeks to serve residential and small commercial customers must also register with the CPUC. The registration requirements can be found on the California Public Utilities Commission website at www.cpuc.ca.gov/static/industry/electric/electric+markets/electric+service+providers/registration+and+requirements/index.htm. A review of the website does not suggest that these provisions have been suspended.

Applicant is aware that one electric service provider, the City of Corona, has filed a petition to clarify or modify Decision 02-03-055. The petition simply requests confirmation by the CPUC that Decision 02-03-055 did not suspend a utility distribution company's ("UDC") obligation to continue to execute a service agreement with an electric service provider who had not previously offered direct access services in the UDC's service territory. While the CPUC has not yet acted on the City of Corona's petition, a draft decision from the assigned administrative law judge, granting the petition, has been circulated for comment. The reasoning in the ALJ draft decision supports the conclusion that new entities can become authorized electric service providers in California. The ALJ's draft decision is provided as Attachment E to this response.

Applicant understands that this matter is scheduled to be heard at the CPUC's Business Meeting on December 17, 2002.

5. Ability of Existing Direct Access Customers to Switch to New Electric Service Providers

Customers that had signed a direct access contract prior to September 20, 2001, may legally switch to a supplier that was authorized prior to September 20, 2001. See section 2 above and D.02-03-055, Findings of Fact 14 and 15 at page 31. Midwest believes that a customer that had signed a direct access contract prior to September 20, 2001, may legally switch to a supplier that is authorized on or after September 20, 2001. See discussion in Section 4 above.

6. Illinois Utilities or Affiliates Serving Customers in Southern California Edison's Service Territory

Applicant is unaware of any Illinois electric utility or affiliate of an Illinois electric utility that is currently serving customers in SCE's service territory.

7. Illinois Utilities or Affiliates Authorized in Southern California Edison's Service Territory

Illinova Energy Partners has an active service agreement authorizing it to provide retail service in SCE's service territory. At one time, Illinova Energy Partners was an affiliate of Illinois Power. Applicant does not know if the entities are still affiliated. Another affiliate of Illinois Power owns physical generating assets in California. Applicant does not know whether such affiliate engages in retail sales in California directly or indirectly.

8. Delivery Of Electricity To California

In both the Eastern and Western Interconnections, physical deliveries of electricity are arranged through contract paths. In order to contract for delivery from Illinois to Southern California, the supplier must own or obtain firm generation rights, contract for transmission

service from the intervening and interconnected transmission providers, and have rights to serve retail load. These “path segments” will be verified as part of the source-to-load chain in connection with the normal control area and transmission provider validation processes as described in the North American Electric Reliability Council (“NERC”) Policy 3.

There are multiple conceivable transmission paths connecting Illinois and Southern California. The most direct transmission path from the Commonwealth Edison service territory would be transmission service through the upper Midwest to Colorado from the Mid-Continent Area Power Pool (“MAPP”). Transmission service from the Western Area Power Administration (“WAPA”) would deliver the power through Colorado to California. Transmission service within California to Southern California Edison’s service territory would be provided by the California Independent System Operator (“CAISO”).

Please note that there is limited transmission transfer capability in any contract path, including the contract path described above. The Eastern and Western Interconnects are joined by a series of Direct Current (“DC”) ties that roughly follow the contour of the Continental Divide. One of these ties allows power exchanges between MAPP and WAPA/Colorado. This tie has a unidirectional flow of 110 MW at any given time. Midwest illustrates this to demonstrate that while transfer capability exists to deliver power and energy almost anywhere in the continental United States, it is not an unlimited capability, and prudent suppliers wishing to engage in power transactions anywhere must arrange transmission service in advance.

9. Active Wholesale Market in the Western Interconnect

There are several active trading hubs in the Western Interconnect. Two of the most liquid hubs that are directly connected to California are the California/Oregon Border (“COB”) and Palo Verde hubs. Two other significant trading hubs are within California at the points

connecting northern and southern California. These are known as NP 15 and SP 15. Platt's Megawatt Daily publishes daily prices for trades at these hubs. The following table lists the daily prices as reported in Platt's Megawatt Daily Market Report on December 3, 2002.

| <i>HUB</i> | <i>Daily Index Price (\$/MWH)</i> | <i>Reported Volume (MWH)</i> |
|-------------------|--|-------------------------------------|
| NP 15 | 43.68 | 425 |
| SP 15 | 43.46 | 350 |
| COB | 39.80 | 375 |
| Palo Verde | 36.85 | 1025 |
| Four Corners | 37.00 | NA |
| Mid-Columbia | 36.34 | 1200 |

The reported volumes above support Applicant's statement that there is an active wholesale market in the Western Interconnect.

10. Economic Delivery of Power and Energy to SCE Service Territory

Midwest believes that an Illinois utility choosing to participate in the California retail market would purchase power in the West for delivery to Southern California. This is particularly apt for those Illinois utilities, like Commonwealth Edison Company ("ComEd"), which no longer own generation. Section 9, above, demonstrates the existence of an active wholesale market in the West, and recent trading prices.

Direct access customers receive a credit against their bundled bill equal to SCE's total Procured Energy cost. Schedule DA defines the credit as the cost SCE would have incurred to serve the average customer in the customer's rate group or a credit based on the customer's actual hourly data for the billing period, less the Historical Procurement Charge. See attachment A to this response. SCE's system average generation rate is approximately 10.7 cents per kWh.

The Historical Procurement Charge has been set at 2.7 cents per kWh, providing an average direct access credit of 8 cents per kWh. If the daily index process were converted from \$/MWH to cents/kWh, the procurement cost from the wholesale markets ranges from 3.63 cents/kWh to 4.7 cents/kWh. This cost is significantly below the direct access credit, making participation in the California retail market economic..

Midwest does not believe that Section 16-115(d)(5) requires an applicant to prove that power purchased in the Midwest can be economically delivered to Southern California. Nevertheless, there are active markets trading in the Midwest region, and for significant periods of times there can be substantial differentials in prices between these hubs and SP 15, the hub closest to the SCE service territory. For example, on Saturday, November 30, 2002, Platt's Megawatt Daily Market Report indicated a daily index price for the Into ComEd hub of \$13.00/MWH. On December 3, 2002, the daily index price for Into ComEd was \$33.00/MWH. These daily index prices compare to SP 15 prices of \$36.81/MWH and \$43.68/MWH, respectively. At times the differential between the two hubs can be greater, at times lesser. Moreover, given the size of the direct access credit as outlined above, it is certainly possible that, even including transmission charges between the two hubs, the total differential would support an economic transaction.

C. Section 451.30: Required Filings And Procedures

Notice of Midwest's Application seeking to become an ARES, filed November 13, 2002, was published in the Edwardsville Intelligencer on November 22, 2002. A certificate of publication from the Edwardsville Intelligencer is provided in attachment F to this response.

D. Section 451.50: License Or Permit Bond Requirements

Attachment G to this response contains a rider to the license bond submitted as part of Midwest's Application, increasing the amount of the license bond issued in favor of the People of the State of Illinois to \$150,000 as required by Section 451.50(a). The Bond is issued by Safeco, a national company licensed to do business in the State of Illinois.

Midwest certifies that it will pay for the cost of the license bond.

E. Section 451.210: General Qualifications Under Subpart C

Pursuant to Section 451.210, Midwest certifies that it will abide by the requirements of Section 16-115A(c) of the Act.

F. Section 451.220: Financial Qualifications Under Subpart C

Pursuant to Section 451.220(a)(4), Midwest certifies that it will offer to reimburse its Illinois retail customers for the additional costs those customers would incur to acquire retail electric energy if Midwest failed to comply with a contractual obligation to supply such energy. This prospective obligation to reimburse Illinois retail customers is covered by a letter of credit issued by Citibank, an institution meeting the requirements of Section 451.220(a) (4) (C), in the amount of \$2,500,000. The letter of credit will be made in favor of the Illinois electric utilities in whose service territory Midwest has applied to be certified, with instructions that the letter of credit may only be drawn upon issuance of an order by the Illinois Commerce Commission ordering refunds to Midwest's Illinois retail customers pursuant to Section 451.220(a)(4). Midwest will provide the letter of credit and rating agency report in a supplemental verified filing no later than December 16, 2002.

The amount of the letter of credit was calculated based upon Midwest's good faith estimate of that the peak amount the Midwest will schedule will not exceed 50 MW, and may

indeed be less than 50 MW. In calculating the size of the payment bond, Midwest used the electric energy price index developed by ICC Staff for the ComEd transmission area contained in the Staff Report with Respect to the Selection of A Methodology for Computing the Average of the 45 Highest Daily Market Prices of Electric Energy Pursuant to 83 Ill. Adm. Code 451 dated January 30, 2002. It is Midwest's good faith estimate that the vast majority of retail load it will initially serve will be located in ComEd's service territory, and thus Midwest believes it is appropriate to use the ComEd index as opposed to some artificial weighted average of the three indices identified in the above-referenced staff report.

G. Section 451.230: Technical Qualifications under Subpart C

As part of its application, Applicant provided the resumes of Ed Ditto, Sue Fletcher and Paul Jacob. Mr. Ditto satisfies the requirement for two years electric sales experience. Mr. Ditto has three years experience in residential and commercial marketing with the Tennessee Valley Authority ("TVA"), marketing to such customers as Saturn, local heat pump retailers, and municipal utilities. Mr. Ditto also has four years experience in wholesale energy trading, split between the TVA and Edison Mission Marketing and Trading, and its predecessor companies. Ms. Fletcher has also had experience in wholesale electric sales as manager of Edison Mission Energy's 24 hour trading desk, and in her current position as director of the Midwestern commercial operations desk.

Ms. Fletcher satisfies the requirement for two years electric system operational experience. She has approximately ten years experience in system operations, starting with her work for ComEd in plant operations and power system operations. Ms. Fletcher is also a NERC-certified electric system operator.

Both Ms. Fletcher and Mr. Ditto satisfy the requirement for three months experience with OASIS reservation processes. Mr. Ditto has six years experience, a key component of which is purchasing transmission service through the OASIS network. Ms. Fletcher has three years experience with OASIS. Together they have purchased literally thousands of hours of transmission service.

Mr. Ditto has five years experience with NERC tagging processes, a key component of which has been the physical scheduling of generation, transmission, and load, while Ms. Fletcher has three years experience in this area. Mr. Ditto has participated on NERC's tagging process design teams, and is well known to the NERC staff. Both Ms. Fletcher and Mr. Ditto have completed tags and overseen the completion of tags on a daily basis.

Ms. Fletcher has approximately 13 years experience working with the rules and practices established by NERC and MAIN. From 1991 through 1998, Sue was employed by ComEd as a Prescheduled Energy Trader/Power Dispatcher. In that position, Sue had responsibility for economic coordination of 36 generating units and 9 peaking locations, all consistent with and pursuant to NERC and FERC regulations and rules. Mr. Ditto has six years experience in this area.

H. Section 451.230(b) (2)

Applicant's agent maintains a real-time desk which is staffed 7 days a week, 24 hours a day. Applicant's agent can be reached as follows:

Edison Mission Marketing and Trading
Dispatch Desk
160 Federal Street
Boston, MA 02110-1776
(617) 912-5909 (phone)
(617) 912-5701 (fax)

Applicant agrees to maintain such access as required by Section 451.230(b) (2).

Dated: December 10, 2002

Respectfully submitted,

MIDWEST GENERATION
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By: _____
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VERIFICATION

I, Fred McCluskey, being first duly sworn, deposes and state that I am an Officer of Midwest Generation Energy Services, LLC (“Applicant”); that I have read the foregoing Verified Response of Midwest Generation Energy Services, LLC to the Administrative Law Judge’s Ruling and that the statements contained therein are true, correct and complete to the best of my knowledge, information and belief.

Fred McCluskey

Subscribed and sworn to before me
this ____ day of December, 2002.

Notary Public

CERTIFICATE OF SERVICE

I, John E. Rooney, hereby certify that I served a copy of the Verified Response of Midwest Generation Energy Services, LLC upon the service list in Docket No. 02-0740 by email on December 10, 2002.

John E. Rooney

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02-0740

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